

Joint Legislative Study Committee on Senior Residential Entrance Fee Contracts

Final Report

December 15, 1999

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**JOINT LEGISLATIVE STUDY COMMITTEE ON
SENIOR RESIDENTIAL ENTRANCE FEE CONTRACTS
FINAL REPORT**

MEMBERS:

Representative Gleason, Co-chair
Representative Foster
Representative Hatch-Miller

Senator Cirillo, Co-chair
Senator Aguirre
Senator Smith

INTRODUCTION:

Enacted by the Legislature of the State of Arizona, senior residential entrance fee contracts (Laws of 1999, Chapter 201) passed last session. ARS 44-6952 establishes the terms of a senior residential entrance fee contract, including: (1) soliciting, entering or extending a contract; (2) setting a seven day rescission period that shall begin on the execution of a contract, payment of money or receipt of disclosure statements; (3) refunding of monies to person upon rescission of contract; (4) delivery of the provider's balance sheet and certified statement of operations.

COMMITTEE CHARGE:

The Joint Legislative Study Committee on Senior Residential Entrance Fee Contracts is charged with the following:

- Review bonding and other securities applicable to the refundable portion of entrance fee contracts;
- Review the advantages and disadvantages of such contracts;
- Review the market environment of such contracts;
- Discuss consumer protection issues regarding entrance fee contracts;
- Receive information regarding the providers of senior residential entrance fee contracts, including both nonprofit and for profit provider;
- Discuss whether the offering of senior residential entrance fee contracts should be subject to limitations or conditions.

REQUIREMENTS:

The committee shall submit a report of its findings and recommendations by December 15, 1999.

TERMINATION:

December 31, 1999.

PROCEEDINGS:

ARIZONA DEPT. OF LIBRARY
ARCHIVES & PUBLIC RECORDS

AUG 23 2002

STATE DOCUMENTS

The committee held one public meeting as follows:

September 23, 1999 (Minutes – Attachment A)

Currently, there are seven non-profit facilities in Arizona that have an entrance fee option. These facilities generally provide only room and board and do not include many of the services provided in assisted living facilities. Almost all assisted living facilities are regulated by the Arizona Department of Health Services (DHS), but facilities that only provide room and board are not regulated by DHS.

The committee discussed the need to implement protections to ensure retirement facilities maintain a sufficient amount of money that can be used for refunds in the event that a facility becomes insolvent. Discussions focused on this need after the events that occurred at Camelot facility in Sun City and the Park Regency facility in Tempe. In both instances, facilities took entrance fees from people and then claimed bankruptcy.

The committee discussed the need for an escrow account. Senator Cirillo commented on how the up-front monies received by these facilities are used to build the physical structures and all of their assets are tied into the structures. Rarely do these facilities maintain a sufficient amount of liquid cash, and refunds are usually made after another person takes a resident's place. Senator Cirillo cautioned against implementing a system that would hinder the ability of these facilities to operate.

Steve Duffy discussed the fact that seven "entrance fee" facilities are currently operating in Arizona, and many have been in business for a significant amount of time. Mr. Duffy also mentioned that all but one of these facilities provide the entrance fee contract as an option. The entrance fee allows for the resident to have lower monthly payments because the resident buys down the monthly payment. Jay Shetler, representative for Glencroft Retirement Community, informed the committee that Glencroft Retirement Community will refund a portion of a resident's entrance fee when the resident leaves and that such refunds are disclosed in the contract.

Elvera Anselmo testified that the population interested in these facilities are vulnerable. Some residents are under the impression that they have purchased property or additional services that are not available. Even so, these facilities are very attractive to seniors who want to move somewhere and remain independent. Ms. Anselmo also mentioned that these facilities often provide a potential resident a package of information, but this information is hard to read, finance oriented and problematic.

RECOMMENDATIONS:

- Any legislation should address non-profit and for-profit facilities.
- Require a one page disclosure statement that is simple to understand but ensures that residents know the specifics of the contract.
- Disclose a Department of Insurance contact number on the disclosure form.

SPEAKERS PRESENT

Jon Dinesman, House Majority Research Analyst, Banking and Insurance Committee

Anthony Abril, Jr. – representing Neighborhood Spirit Association

Steve Duffy - Lobbyist, representing Arizona Association of Homes and Housing for the Aging.

Jay Shetler – Glencroft Retirement Community

Elvera Anselmo – Attorney General's Office, Elder Affairs Program Director

ATTACHMENTS:

Original minutes, attachments, and tape are on file in the Office of the Chief Clerk.

ARIZONA STATE LEGISLATURE

Interim Meeting Notice

Open to the Public

JOINT LEGISLATIVE STUDY COMMITTEE ON SENIOR RESIDENTIAL ENTRANCE FEE CONTRACTS

DATE: THURSDAY, SEPTEMBER 23, 1999

TIME: 2:00 P.M.

PLACE: Senate Hearing Room 2

**SUBJECT: Laws 1999, Chapter 201 (House Bill 2145)
Senior Residential Entrance Fee Contracts**

Presentations:

- 1. Explanation of the provisions of the bill**
- 2. Proposed disclosure statement**
- 3. Public comment**

MEMBERS:

**Representative Foster
Representative Hatch-Miller
Representative Gleason, Co-chair**

**Senator Aguirre
Senator Smith
Senator Cirillo, Co-chair**

ga
9/22/1999

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State of Arizona
House of Representatives
Forty-fourth Legislature
First Regular Session
1999

FILED

Betsey Bayless
Secretary of State

CHAPTER 201

HOUSE BILL 2145

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 25; RELATING TO SENIOR RESIDENTIAL ENTRANCE FEE CONTRACTS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 44, Arizona Revised Statutes, is amended by adding chapter 25, to read:

CHAPTER 25

SENIOR RESIDENTIAL ENTRANCE FEE CONTRACTS

ARTICLE 1. GENERAL PROVISIONS

44-6951. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ENTRANCE FEE" MEANS AN INITIAL OR DEFERRED TRANSFER TO A PROVIDER OF A FACILITY OF A SUM OF MONEY OR PROPERTY BY A PERSON ENTERING INTO A SENIOR RESIDENTIAL ENTRANCE FEE CONTRACT THAT IN AMOUNT OR VALUE IS AT LEAST SIX HUNDRED PER CENT OF THE PERIODIC FEE CHARGED TO A RESIDENT, ALL OR A PORTION OF WHICH MAY BE REFUNDED TO THAT RESIDENT, A BENEFACITOR OR A BENEFICIARY ON THE RESIDENT'S TERMINATION OF RESIDENCE IN THE FACILITY.

2. "FACILITY" MEANS A PLACE OR PLACES IN WHICH A PROVIDER UNDERTAKES TO PROVIDE A RESIDENT WITH A LIVING UNIT PURSUANT TO A SENIOR RESIDENTIAL ENTRANCE FEE CONTRACT. FACILITY DOES NOT INCLUDE ANY PROVIDER THAT IS REGULATED BY THE DEPARTMENT OF INSURANCE PURSUANT TO TITLE 20, CHAPTER 8.

3. "LIVING UNIT" MEANS ANY APARTMENT, ROOM OR OTHER AREA IN A FACILITY SET ASIDE FOR THE EXCLUSIVE USE OF ONE OR MORE IDENTIFIED RESIDENTS.

4. "PERIODIC FEE" MEANS THE MONTHLY CALCULATED AMOUNT CHARGED TO A RESIDENT FOR LODGING IN A LIVING UNIT PROVIDED PURSUANT TO A SENIOR RESIDENTIAL ENTRANCE FEE CONTRACT.

5. "PROVIDER" MEANS A PERSON WHO PROVIDES LODGING TO SENIORS IN A LIVING UNIT PURSUANT TO A SENIOR RESIDENTIAL ENTRANCE FEE CONTRACT.

1 6. "RESIDENT" MEANS AN INDIVIDUAL WHO ENTERS INTO A SENIOR RESIDENTIAL
2 ENTRANCE FEE CONTRACT WITH A PROVIDER OR WHO IS DESIGNATED IN A SENIOR
3 RESIDENTIAL ENTRANCE FEE CONTRACT TO RECEIVE LODGING.

4 7. "SENIOR RESIDENTIAL ENTRANCE FEE CONTRACT" MEANS A CONTRACT TO
5 PROVIDE A LIVING UNIT IN A FACILITY FOR THE DURATION OF A RESIDENT'S LIFE OR
6 FOR A TERM OF MORE THAN ONE YEAR THAT IS CONDITIONED ON THE TRANSFER OF AN
7 ENTRANCE FEE TO THE PROVIDER IN ADDITION TO OR IN LIEU OF THE PAYMENT OF
8 PERIODIC CHARGES FOR THE LIVING UNIT AND THAT IS FURTHER CONDITIONED ON THE
9 RESIDENT'S ABILITY TO LIVE INDEPENDENTLY.

10 44-6952. Senior residential entrance fee contracts; offer;
11 rescission; disclosure

12 A. A PERSON SHALL NOT SOLICIT OR ENTER INTO OR EXTEND THE TERM OF A
13 SENIOR RESIDENTIAL ENTRANCE FEE CONTRACT AS A PROVIDER EXCEPT PURSUANT TO
14 THIS CHAPTER.

15 B. THE SENIOR RESIDENTIAL ENTRANCE FEE CONTRACT SHALL PROVIDE THAT ANY
16 PERSON WHO ENTERS INTO THE CONTRACT HAS A PERIOD OF SEVEN DAYS TO RESCIND THE
17 CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION. THE SEVEN DAYS BEGINS ON THE
18 FIRST FULL CALENDAR DAY AFTER THE LAST TO OCCUR OF ANY OF THE FOLLOWING
19 EVENTS:

20 1. THE EXECUTION OF THE CONTRACT.

21 2. THE PAYMENT OF AN INITIAL SUM OF MONEY AS A DEPOSIT OR APPLICATION
22 FEE.

23 3. RECEIPT OF THE DISCLOSURE STATEMENTS AND CONTENTS PRESCRIBED IN
24 SUBSECTION D.

25 C. IF A RESCISSION OCCURS, THE PROVIDER SHALL FULLY REFUND ALL MONIES
26 OR PROPERTY PAID OR TRANSFERRED BY THE PERSON. A FACILITY SHALL NOT REQUIRE
27 A PERSON TO MOVE INTO A FACILITY UNTIL AFTER THE EXPIRATION OF THE SEVEN DAY
28 RESCISSION PERIOD.

29 D. AT OR BEFORE THE EXECUTION OF A SENIOR RESIDENTIAL ENTRANCE FEE
30 CONTRACT AND THE TRANSFER OF ANY MONEY OR OTHER PROPERTY TO A PROVIDER
31 PURSUANT TO A CONTRACT, THE PROVIDER SHALL DELIVER TO THE PERSON WHO IS
32 EXECUTING THE SENIOR RESIDENTIAL ENTRANCE FEE CONTRACT BOTH OF THE FOLLOWING:

33 1. A COPY OF THE PROVIDER'S MOST RECENT CERTIFIED STATEMENT OF
34 OPERATIONS AND BALANCE SHEET PREPARED ACCORDING TO GENERALLY ACCEPTED
35 ACCOUNTING PRINCIPLES.

36 2. A DISCLOSURE STATEMENT THAT PROVIDES IN CLEAR AND CONSPICUOUS TYPE
37 THE FOLLOWING INFORMATION:

38 (a) THE NAME OF THE FACILITY.

39 (b) THE NAME OF THE OWNER OF THE FACILITY.

40 (c) THE AMOUNT OF THE ENTRANCE FEE.

41 (d) THE PORTION OF THE ENTRANCE FEE THAT IS OR MAY BE REFUNDABLE TO
42 THE RESIDENT AND THE TERMS ON WHICH THE REFUND IS TO BE MADE.

43 (e) WHETHER, AND BY WHAT METHOD, THE REFUNDABLE PORTION OF THE
44 ENTRANCE FEE IS INSURED, GUARANTEED, SECURED OR OTHERWISE PROVIDED FOR.

1 Sec. 2. Joint legislative study committee on senior residential
2 entrance fee contracts; members; duties; report

3 A. The joint legislative study committee on senior residential
4 entrance fee contracts is established consisting of the following members:

5 1. Three members of the senate who are appointed by the president of
6 the senate, not more than two of whom represent the same political party.
7 The president of the senate shall designate one member as cochairperson of
8 the committee.

9 2. Three members of the house of representatives who are appointed by
10 the speaker of the house of representatives, not more than two of whom
11 represent the same political party. The speaker of the house of
12 representatives shall designate one member as cochairperson of the committee.

13 B. The committee shall:

14 1. Conduct at least one public hearing.

15 2. Receive testimony and other information relating to:

16 (a) The practice of offering senior residential entrance fee contracts
17 to seniors.

18 (b) The providers of senior residential entrance fee contracts,
19 including both nonprofit and for profit providers.

20 (c) The market for senior residential entrance fee contracts.

21 (d) Any necessary changes in the law relating to senior residential
22 entrance fee contracts.

23 (e) Consumer protection issues arising from senior residential
24 entrance fee contracts.

25 (f) The applicability and availability of bonds or other forms of
26 security with respect to refundable portions of senior residential entrance
27 fee contracts.

28 (g) The comparative advantages and disadvantages of senior residential
29 entrance fee contracts.

30 (h) Whether the offering of senior residential entrance fee contracts
31 should be subject to limitations or conditions.

32 (i) The impact of limitations or conditions on senior residential
33 entrance fee contracts.

34 (j) Any other issue determined necessary for consideration and study
35 by the committee.

36 C. The committee shall submit a report regarding the committee's
37 analyses, findings and recommendations on or before December 15, 1999 to the
38 president of the senate, the speaker of the house of representatives and the
39 governor. The committee shall submit a copy of the report to the secretary
40 of state and the director of the department of library, archives and public
41 records.

42 Sec. 3. Delayed repeal

43 Section 2 of this act is repealed from and after December 31, 1999.

~~APPROVED BY THE GOVERNOR MAY 12, 1999~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 1999~~

Residential Entrance Fee Consolidated Disclosure Statement

For

(Facility name), an Arizona not-for-profit corporation which is tax exempt under Section 501(c)(3) of the Internal Revenue Code

This consolidated disclosure statement conforms with the requirements of Section ____ of Arizona Revised Statute ____, related to disclosure for residential entrance fee contracts. All prospective residents are strongly encouraged to read the comprehensive disclosure documents, financial statements, and residency agreements before entering into any residency agreement. Prospective residents may also want to consider seeking legal, financial or other professional assistance in their decision-making. Representatives of (facility name) are available during normal business hours to answer any question prospective residents may have about (facility name).

The undersigned has expressed consideration of entering into a residential entrance fee agreement for unit ____ at (facility name). The terms of such an agreement would include:

Amount of Entrance Fee – Residency in the prescribed unit requires the payment of an entrance fee of \$ _____, (a portion of) which is refundable under the terms and conditions outlined below.

Facility Terms and Conditions of Entrance Fee Refund –

Security of the Refundable Portion of (Facilities name)'s Entrance Fee: (Whether, and by what method, the refundable portion of the entrance fee is insured, guaranteed, secured, or otherwise provided for.)

(Facility name) has operated in Arizona since 19xx, and has been offering residential entrance fee contracts since ____.

The undersigned prospective resident acknowledges receipt of the following documents:

- _____ Comprehensive disclosure statement;
- _____ Consolidated financial statements and information;
- _____ Residency agreement.

(Prospective Resident)

(Prospective Co-resident)

(Facility Representative)

This document is for state-mandated disclosure purposes only, and does not in any way constitute an agreement between the prospective resident and the facility, nor an endorsement by the State of Arizona.

ARIZONA STATE LEGISLATURE
Forty-fourth Legislature – First Regular Session

JOINT LEGISLATIVE STUDY COMMITTEE ON
SENIOR RESIDENTIAL ENTRANCE FEE CONTRACTS

Minutes of Meeting
Thursday, September 23, 1999
Senate Hearing Room 2 – 2:00 p.m.

(Tape 1, Side A)

The meeting was called to order at 2:05 p.m. by Cochairman Gleason and attendance was noted by the secretary.

Members Present

Senator Aguirre
Senator Smith
Senator Cirillo, Cochairman

Representative Foster
Representative Hatch-Miller
Representative Gleason, Cochairman

Speakers Present

Jonathan Dinesman, House Majority Research Analyst, Banking and Insurance Committee
Anthony Abril, Jr., representing Neighborhood Spirit Association
Steve Duffy, Lobbyist, representing Arizona Association of Homes and Housing for the Aging
Jay Shetler, Glencroft Retirement Community, Glendale
Elvera Anselmo, Elder Affairs Program Director, Attorney General's Office

Cochairman Gleason explained that H.B. 2145, senior residential entrance fee contracts (Laws of 1999, Chapter 201) passed last year. Due to discussions held in the Senate, an agreement was reached to establish this Study Committee. He explained that an organization operating Camelot facilities in Sun City and Phoenix took entrance fees from people and claimed bankruptcy. The people living at the facility had no legal recourse to get their money back.

Jonathan Dinesman, House Majority Research Analyst, Banking and Insurance Committee, explained that H.B. 2145 includes senior residential entrance fee contracts in the category of living facilities contracts, outlines terms of the contracts, and establishes the Study Committee. He reviewed issues to be addressed by the Study Committee (Attachment 1).

He related to Senator Smith that the bill does not include a method to insure that facilities have sufficient financial background or deposits so refunds of entrance fees can be made in case something happens. The bill does provide terms to follow, such as delivery of the provider's balance sheet, in an attempt to give the person entering into contracts a better understanding of

the situation. Senator Smith pointed out that if a facility goes bankrupt, there is no money, so not too much can be done.

Senator Cirillo noted that previous discussions were held about placing deposits in an escrow account; however, most of the homes operate on the basis of people providing up-front money, then the home or addition is built, so assets are really in bricks and mortar. When a resident leaves, refunds are made from the entrance fee of the person taking the resident's place. He cautioned against creating a system that could destroy the way residential facilities operate.

Anthony Abril, Jr., representing Neighborhood Spirit Association, expressed a concern about elderly people losing funds.

Steve Duffy, Lobbyist, representing Arizona Association of Homes and Housing for the Aging, stated that he represents an association of over 100 non-profit providers of long-term care and other housing services for the elderly, including entrance fee contract arrangements. Referring to escrow of funds, he indicated that the process would create operational problems for the facilities, perhaps lessen the sense of security for residents, and may result in facilities no longer providing the option.

He related that a survey of the Association showed that about seven facilities in Arizona provide entrance fee contracts, although he recently heard that there may be an additional for-profit organization. Facilities with entrance fee contracts, except one in Green Valley, provide the service as an option within the facility. The service is basically presented as a choice between a month-to-month payment or an entrance fee contract in which the resident pays a more substantial amount up-front in order to reduce monthly payments. He added that H.B. 2145 stipulates that potential residents have seven days from execution to rescind an entrance fee contract.

Mr. Duffy related that the survey showed that entrance fee contracts vary depending on the age of the person and other items. Entrance fee contracts are beneficial, for example, to someone who recently sold a home and has a relatively large sum of money, but not a large income on a monthly basis.

Mr. Gleason pointed out that entrance fee contract arrangements generally provide room and board, with amenities such as a swimming pool, etc., but do not provide as many services as an assisted living facility.

Mr. Duffy advised Mrs. Foster that entrance fees are typically refundable in whole or a substantial portion. Although all facilities may not be the same, for the most part, the lion's share of the entrance fee is refunded when the person leaves, or if the person dies, the estate receives the refund. He advised that if funds are placed in escrow, facilities could not provide a cash refund to the people who leave.

Mr. Hatch-Miller speculated that if another contract must be sold in order to have the money to provide a refund, there is almost a guarantee, in the case of bankruptcy, that there will be no refund to the residents.

Mr. Duffy stated that the process provides liquidity for a refund, not necessarily assets. A company may have many assets, including the building itself. He commented that H.B. 2145 requires disclosure of the financial condition of a facility, and he would like to see some strengthening of that disclosure requirement. One of the people involved in the situation in Sun City was an auditor in his working life, but despite that, he did not bother to read the numerous documents provided by the facility to determine if a stable environment existed. Mr. Duffy suggested providing a one-page detailed, relatively clear document relating the amount of up-front money provided, the percentage that is refundable, how the refund is secured, and indicating that documentation about the facility's financial condition is provided, so people can make a determination whether or not to choose the particular arrangement (Attachment 2).

Jay Shetler, Glencroft Retirement Community, Glendale, stated that the entrance fee concept is basically a financing function to buy down the monthly payment. Entrance fees collected from the original group of residents who move into the community pay off the contractors who build the project, and hopefully, some reserves are set aside so that during turnover of the apartments over the years, as additional entrance fees are paid and refund payments are made, significant reserves accrue.

He noted that a Wall Street Journal article about the failure of the Camelot facilities concerned him because of misperceptions by the residents about what they were purchasing and the lack of a disclosure document. At Glencroft, a disclosure document has voluntarily been provided for years, so that has never been an issue with the residents. In fact, many prefer the entrance fee option over the higher rental payments.

Mr. Shetler informed Senator Cirillo that the residents do not accrue interest on up-front payments. He noted that some people moving into the facilities are 78 years old and have not made a mortgage payment in perhaps 30 years, so a monthly payment of \$1,500 or \$1,600 is not marketable to them, which is good reason for choosing the entrance fee contract option.

Mrs. Foster indicated that many people in the 70 and 80-age group would have difficulty making a \$40,000 up-front payment.

Mr. Shetler indicated that a ten-year occupancy under entrance fee financing costs much less than a ten-year occupancy using the monthly rental option. At the end of ten years, the resident is refunded 70 percent of the up-front payment. He indicated that Glencroft has been in operation for nearly 30 years, and during that time, every resident who vacated an apartment was given the full refund. He clarified that most residents enter facilities at about the age of 78 and the majority are able to stay for 9 or 10 years.

Mr. Gleason asked if a resident receives a pro-rated refund if he/she moves into a facility and leaves in five years. Mr. Shetler responded that some contracts contain a pro-rated share, others

stipulate a 70 percent refund. Those stipulations are disclosed in the contract. He clarified that pricing at Glencroft is based more on the original construction cost of a unit, with gradual modest increases that have been made in the entrance fee over the years. Residents pay the same price regardless of age.

Senator Aguirre speculated that if an elderly couple sold a home at a capital gain of \$100,000, \$40,000 could be invested into the residential community without being taxed.

Mr. Shetler replied that he is not qualified to address the question, but surmised that a one-time exclusion would apply. He added that Glencroft's entrance fees are very favorable compared to real estate values in the City of Glendale, so a person selling a single family home in the community typically has excess funds after paying the entrance fee. The option works well and the market has been very responsive.

Senator Cirillo identified a recommendation to provide more disclosure with a simplified one-page document so residents understand the implications of the agreement and how it will affect the monthly rent, etc. He added that a certain percentage of people still will not understand what is happening and make a wrong decision, but government can only go so far in protecting people.

Mr. Shetler stated that he favors a proposed disclosure document with very clear directions advising residents to share information with their children, attorney, etc. He concurred with the seven-day right of refusal, noting that it has been in effect at Glencroft for the last six or seven years. He advised that monthly fees are structured to cover the cost of maintenance, capital improvements, programs, activities, staff, etc. Residents are not prepaying for any portion of health care, but the facility is a retirement community with a support system built in through the monthly fee. Contracts contain the ability for Glencroft to increase rates with notice, but traditionally, increases have been at the consumer price index (CPI) or lower. A disclosure document outlines services covered under the monthly fee and lists services available for an additional fee.

Senator Smith indicated that the Committee is venturing from its focus, which is to determine what can be done so that people are able to obtain refunds in case of bankruptcy, etc. Senator Cirillo responded that many Members are attempting to become familiar with the industry before recommending any changes.

Mr. Shetler advised Mrs. Foster that he represents a non-profit organization, but both were surveyed. As far as he knows, the seven facilities in the State providing these contracts today are non-profit. The two that went bankrupt were for-profit organizations. He revealed that there are criminal actions with respect to the people operating those two facilities. The additional facility he heard about this morning is a for-profit agency.

Mrs. Foster opined that the Committee should make sure the recommendations/legislation address nonprofit and for-profit facilities.

Mr. Gleason commented that the managers of the two facilities that went bankrupt had a history of not being good operators in California.

Elvera Anselmo, Elder Affairs Program Director, Attorney General's Office, testified that senior residential entrance fee communities are very attractive to older adults who want to plan ahead and age in place. Many consumers want to be able to move somewhere and remain independent, but if some kind of care is needed, they also want to be able to move into that type of setting. This is a very vulnerable population, and she has evidenced many problems as a result of these contracts, i.e., residents under the impression that they purchased property or additional services that are not available.

Ms. Anselmo acknowledged that many times a whole package of information is provided to potential residents, which is difficult to read, very finance-oriented, and problematic. Referring to the one-page disclosure form (Attachment 2), she predicted that the document will no longer be one page after details of the arrangement are filled in. She admitted that disclosure is important, but opined that agency oversight is also important because the elderly are so vulnerable. She related that during the past session, Mr. Gleason asked the Arizona Department of Insurance (DOI) to discuss oversight problems, and DOI staff developed an amendment with system oversight, including an application process, some disclosure, and an escrow, which is the most problematic to the industry. She submitted that problems in institutions should be reported to someone so there is some oversight.

Ms. Anselmo related that an important feature of DOI is the ability to conduct examinations of facilities if a problem exists. When a consumer calls the Attorney General's Office, a fraud investigation is necessary; however, if someone cannot afford an attorney, it would be helpful if consumers could provide information to DOI so an independent auditor can review the situation. Perhaps problems could be resolved before 50, 100, or 150 people have to leave a facility.

She referred to the comments made about escrow, indicating that she understands why non-profit corporations want an influx of money for improvements, expansions, etc., but contended that non-profit organizations can make mistakes, too. She is not trying to make the industry look bad, but the policy made today is the policy that will be effective tomorrow. Even though a minimal number of facilities currently conduct this business, it is a burgeoning industry. Marriott Hotels currently has a Senior Living Division that contributes five percent of corporation funding; however, it is anticipated that the Division will generate 25 to 30 percent within the next five to seven years. Therefore, for-profit organizations are entering this industry, so monitoring is needed.

(Tape 1, Side B)

She related to Mrs. Foster that an Arizona Republic article in the Real Estate Section in November 1997 ranked Arizona as fifth for construction of senior assisted retirement communities. She advised Mr. Hatch-Miller that almost all assisted living facilities, except those providing only room and board, are regulated by the Arizona Department of Health Services

(ADHS). In a community retirement setting with two or three different types of housing for seniors and different levels of services, some portions are regulated by ADHS and some are not.

Senator Cirillo stated that facilities utilizing entrance fee contracts are not regulated because health care is not provided, but nobody is attempting to "get around" ADHS regulation by not providing a health care facility. There is a very legitimate need by the senior community for facilities that offer entrance fee contracts. Many seniors want to stay independent as long as possible, and it would be wrong to force anyone into a facility that provides additional services that are not needed or wanted. He added that residential-type facilities are much cheaper than most of the others available, but caution is needed as far as regulation so the ability to provide this service is not inhibited.

Ms. Anselmo agreed that the facilities provide a service and niche in the market, adding that the only question is to what extent oversight or disclosure is needed for this vulnerable population.

Mr. Abril stated that these properties are relative to the enterprise or federal trade zone, and if residential homes are built, the property owner will receive all the tax incentives, which the residential person should receive as well.

Senator Cirillo assumed that if a new home is built and some kind of incentive is derived from the community, the incentive will be built into calculation of the amount charged for the entrance fee and rent.

Mr. Gleason concluded that one of the better protections to provide people is full and simple disclosure and making sure residents know the specifics of a contract. Agency oversight is also necessary. He indicated that work will continue on legislation with input from people in attendance.

Ms. Aguirre pointed out that Ms. Anselmo suggested applying a DOI contact number on the disclosure form for elderly persons to call.

Without objection, the meeting adjourned at 3:25 p.m.


Linda Taylor, Committee Secretary

(Original minutes, attachments, and tape are on file in the Office of the Chief Clerk. A copy of minutes and attachments are on file with the Senate Secretary.)